

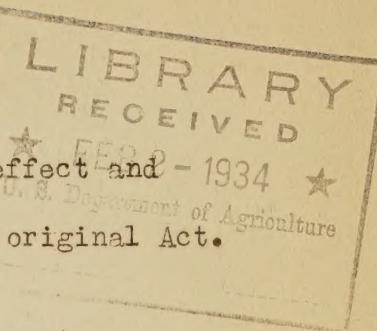
Historic, Archive Document

Do not assume content reflects current scientific knowledge, policies, or practices.

1.9
Agg Sug

SUGGESTED CLARIFYING AMENDMENTS TO THE
AGRICULTURAL ADJUSTMENT ACT.

The following amendments are purely clarifying in effect and do not involve any change in the policies embodied in the original Act.



I. Declaration as to Protection of Consumers' Interests:--

Amend subsection (3) of Section 2 by striking out that portion of the subsection beginning with the word "readjusting", in line 1, and ending with the words "August 1909-July 1914" and insert in lieu thereof the following:

"establishing and maintaining a fair relationship between prices paid to the producers of agricultural commodities and prices to consumers of such commodities and of the products thereof."

This subsection will then read (new matter underscored):

"To protect the consumers' interest by establishing and maintaining a fair relationship between prices paid to the producers of agricultural commodities and prices to consumers of such commodities and of the products thereof."

The present provision is not a clear statement of one method by which the Agricultural Adjustment Act can and should protect consumers. The limit of parity prices to farmers specified in the Act is one protection; the other protection which was meant to be specified in subsection (3) of Section 2 is by preventing the spread between farm prices and consumer prices from being unreasonable. It is proposed to state this plainly in the above amendment.

II. Extending and Strengthening of Marketing Agreement Provisions.

Amend subsection (2) of Section 8 to read as follows (new matter underscored):

"After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct or in any way affect, interstate or foreign commerce. The making of any such agreement shall not be held to be in violation of any

of the antitrust laws of the United States, and any such agreements shall be deemed to be lawful: Provided, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agreement the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under Section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements."

The suggested additions merely make clear the intention of Congress to permit the Secretary of Agriculture to use marketing agreements in as wide a field as possible. Under the present form of the Act it may be contended that only purely interstate transactions can be covered by a marketing agreement.

The marketing agreement provisions have also been extended to permit individual producers to become parties to the agreements.

The words "to interested parties" have been stricken out of the notice and hearing clause since they add nothing to the effect of the Section.

III. Extending and Strengthening of Licensing Section.--

Strike out the last sentence of Section 10, subsection (h); strike out present terms of Section 8 (3) and substitute therefor the following (old matter underscored):

Section 8(3). (a) After due notice and opportunity for hearing, (1) to prohibit processors, associations of producers, and others from engaging in the handling of any agricultural commodity or product thereof, or any competing commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct or in any way effect, interstate or foreign commerce, without a license, and (2) to issue licenses to permit processors, associations of producers, and others to engage in such handling upon such terms and conditions as the Secretary of Agriculture may deem necessary to effectuate the declared policy of this Act and the restoration of normal economic conditions in the marketing, and/or financing of such commodities.

(b) After due notice and opportunity for hearing, to revoke any such license as to or of any person or persons for violation of the terms or conditions thereof. Any order of the Secretary of Agriculture so revoking any such license shall be final if in accordance with law.

(c) Any person engaged in such handling without a license in violation of the terms of this Section, and any other person knowingly participating in or aiding such handling, and any other person knowingly engaging in or carrying on the same business undertaking of any licensee whose license has been revoked, shall forfeit to the United States a sum not in excess of One thousand Dollars (\$1,000) for each day during which such violation or such carrying on of said business undertaking continues, which forfeiture shall be payable into the treasury of the United States and shall be recoverable in a civil suit brought in the name of the United States.

(d) The several district courts of the United States are hereby vested with jurisdiction to prevent and restrain violations of any marketing agreement approved by the Secretary of Agriculture and of any license issued by him, pursuant to the provisions of this Act, and to prevent and restrain any person from handling any agricultural commodity or product thereof or competing commodity or product thereof, without a license when such handling of such commodity without a license has been prohibited by the Secretary, pursuant to the powers vested in him by this Act.

(e) The remedies provided for in this section shall be in addition to and not exclusive of, any of the remedies or penalties provided for elsewhere in this Act or now or hereafter existing at law or in equity.

(f) Upon the request of the Secretary of Agriculture it shall be the duty of the several district attorneys of the United States, in their respective districts, under the directions of the Attorney General, to institute proceedings to enforce the remedies and to collect the forfeitures provided for in this section.

(g) The term "person" as used in this Act includes an individual, partnership, corporation, association, and any other business unit.

It seems wise to require a hearing before the issuance of licenses in order to make the license and marketing agreement provisions similar. The other suggested changes in this Section all add to the effectiveness of the enforcement provisions.

IV. Extend and Strengthen Right to Examine Books:-- Strike out
Section 6 (4) and substitute therefor the following (old matter under-
scored):

"(4) To require any licensee under this section to furnish to the Secretary of Agriculture such reports and such answers to interrogatories, as to the quantities bought and/or sold by him of agricultural commodities or products thereof and/or competing commodities or products thereof, with respect to the handling of which such licensee is licensed, and as to the prices of such commodities, and as to trade practices and charges, and as to the details of any transaction of such licensee, in the handling of such commodities or products thereof, and as to all other matters, as may be necessary for the purposes of Part 2 of this title; to require any such licensee to keep such accounts or such systems of accounts as may be prescribed by the Secretary for the purposes of Part 2 of this title; to require any such licensee, at all reasonable times, to permit the Secretary of Agriculture, to have access to, to examine and to copy any books, records, accounts, contracts, documents, memoranda, papers, correspondence and other written data belonging to or kept on behalf of such licensee, or any subsidiary, affiliate, agent or broker of such licensee, relating to the handling of any agricultural commodities or products thereof, or any competing commodities or products thereof, with respect to which such licensee is licensed. All information furnished to or obtained by the Secretary of Agriculture pursuant to this section shall, if so specifically designated in writing by the licensee, remain the confidential information of the Secretary of Agriculture and such of his agents and employees as may be entitled to the same in the regular course of their official duties, and shall not be divulged, disclosed or made public except that such information (a) may be combined and published in the form of general statistical studies or data in which the identity of the persons furnishing such information shall not be disclosed, (b) may be divulged or disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or in response to a subpoena issued by any court of competent jurisdiction, and (c) may be offered in evidence by or on behalf of the Secretary of Agriculture or the United States, or both, in any action, suit or proceeding brought pursuant to this Act, or in any hearing held pursuant to this Act, or in any other action, suit or proceeding in which the

-15-

validity, propriety or applicability of the provisions of any license is challenged or involved, whether or not such information was obtained from or furnished by the person or persons by or against whom such action, suit, proceeding or hearing was instituted."

The suggested additions make more specific the information which the Secretary may request and provide that information received by the Secretary will be confidential.

V. To Clarify Agencies the Secretary May Use:--Amend Section 10 (b) by inserting after the word "title" in line 3 the following:

"such agencies as he may deem necessary, including corporations organized pursuant to the laws of the several states or of the District of Columbia."

This subsection will then read (new matter underscored):

"The Secretary of Agriculture is authorized to establish, for the more effective administration of the functions vested in him by this title, such agencies as he may deem necessary, including corporations organized pursuant to the laws of the several states or of the District of Columbia, State and local committees, or associations of producers, and to permit cooperative associations of producers, when in his judgement they are qualified to do so, to act as agents of their members and patrons in connection with the distribution of rental or benefit payments."

The purpose of the above suggestion is merely to clarify the authority of the Secretary to use such agencies as he may deem proper. Under the existing language there is some possibility of a narrow construction to the effect that the Secretary may use only the agencies specified.

VI. Extending appropriation provisions:--Amend Section 12 subsection (c) by inserting after the words "books of reference" in line 4, the words "for newspapers and clippings, for periodicals."

This subsection will then read (new matter underscored):

"The administrative expenses provided for under this section shall include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for newspapers and clippings, for periodicals, for contract stenographic reporting services, and for printing and paper, in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title."

The purpose of this change is to enable the Information Division to subscribe to the necessary newspapers, clipping services and periodicals.

VIII. Extending Separability Clause:-- Amend Section 14 by inserting after the word "thereof" in line 4, the words "and of such provision."

This subsection will then read (new matter underscored):

"If any provision of this title is declared unconstitutional, or the applicability thereof to any person, circumstance, or commodity is held invalid the validity of the remainder of this title and the applicability thereof and of such provision to other persons, circumstances, or commodities shall not be affected thereby."

The suggested change will make this Section conform to the similar section in the National Industrial Recovery Act.

VIII. Clarifying Amendments of Tax Provisions.

The following passages contain suggested amendments to the tax provisions of the Act. They are all either of a clarifying nature or are calculated to aid in the enforcement of the taxes provided by the Act. Consequently, they do not represent any change in the fundamental policies expressed in the Act.

These suggested changes have been carefully gone over by officials of the Bureau of Internal Revenue and have received their approval. In many cases the suggested changes were originally proposed by the Bureau of Internal Revenue in order to facilitate the collection of taxes.

Each suggested tax provision has been stated on a separate page.

Section 9(b)

In Line 13, after the word "commodity", strike out the period and add a comma, and the words

"unless the processing tax at such rate will otherwise defeat the declared policy, in which event it shall remain at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity, or shall be at such lesser rate as will effectuate the declared policy."

It might be found desirable to depress the farm price of a commodity by imposing the full rate of tax in order to force producers to cooperate in the program. This could not be done under the present language of Section 9(b), whereas it could be done under the proposed amendment. For example, let us suppose that not sufficient producers of hogs were cooperating, the imposition of a tax at the rate equaling the full difference between the current average farm price for hogs and the fair exchange value thereof would make it uneconomic for farmers to raise hogs except within the limits which they could raise hogs by agreement with the Secretary. It is suggested that the Secretary should have the power to force cooperation in the program in this manner, if he should desire to do so.

Section 9(d)

Subdivision (1).

In line 1, after the word "wheat", strike out the comma and add the word "or".

In line 1, strike out the words "and corn" and the comma which follows.

In line 3, after the word "wheat", strike out the comma and add the word "or".

In line 3, after the comma which follows the word "rice" strike out the words "or corn for market" and add in lieu thereof the words "for distribution, or use".

Subdivision (4).

Strike out all of subdivision 4 and insert in lieu thereof the following:

"(4) In case of field corn, the term "processing" means the milling or other processing (except cleaning and drying) of field corn for distribution, or use, including custom milling for toll, as well as commercial milling, but shall not include that portion of the field corn milled or otherwise processed which results in the production of feed."

Subdivision (5).

"In case of sugar beets and sugar cane: (A) The term "processing" (or manufacturing) means the processing (or manufacturing) of sugar beets or sugar cane into refined sugar or into any sugar which is not to be further refined. When raw sugar is produced by one person and the final refining is done by another person, the final refining of the sugar shall be deemed to be the processing (or manufacturing); (B) the term "Processor" means the person completing the processing (or manufacturing.)"

Subdivision 5.

The present Subdivision 5 of Section 9(d) is hereby renumbered (6).

In line 3, strike out the word "market" and the comma which follows and insert the words "distribution, or use".

Because of the use of the term "for market", the exemption granted in subsection (b) of Section 15 is in many cases meaningless. Since a producer who processes, or has processed for him, hogs for consumption by his own family, employees, or household, is not processing, or having the hogs processed, for market, he does not come within the tax provisions of the Act at all. In addition, because of the use of the words "for market" in subdivisions 1, 4 and 5, of Subsection (d), of Section 9, a person who is not a producer can purchase a live hog, corn, wheat, or rice and process the commodity himself without being liable for any tax. In the case of hogs, he can have the hogs processed for him without the processors being liable for any tax.

The reason for striking out the definition of "processing" in the case of hogs is because there are situations in various parts of the country which could be met by giving the Secretary power to define the term in regulations. For instance, in many counties of the Northeast and Southeast, and in Virginia and Georgia, many farmers slaughter hogs and deliver the dressed carcass to the slaughterhouse. These farmers are now liable for the processing tax. It is not possible, under the present wording of Section 9(d)(4), to define first domestic processing in the case of hogs so as to have the slaughterhouse, which divides the dressed carcass into commercial cuts, pay the tax. By the above suggested amendment it would be possible to put the tax on the slaughterhouse, which divides the dressed carcass, and in the said

communities we would have six or eight taxpayers instead of three or four hundred. The tax would be easier to collect and it might well be that the producer would gain a slight advantage in net receipts for his hogs. No loss of tax will result. Farmer objections to the processing tax are bound to be fewer.

The reason for taking field corn out of the definition in Section 9(d)(1) is because "not in the form of flour" does not apply to field corn. In addition, it was unquestionably the intent that the processing tax was not to be shifted to the farmer, in the case of feed. As the statute now reads, some of the field corn being ground and going into feed bears the tax, whereas corn ground for feed purposes only does not bear the tax. This is the result determined by the Bureau of Internal Revenue by its interpretation of the word "only". The new definition of "processing" in the case of field corn would mean that no part of the tax on field corn would be borne by feed.

In the event that Congress decides to make sugar beets and sugar cane a basic agricultural commodity in substance in accordance with the bill introduced by Senator Costigan, it seems desirable to define processing as we have done. If defined in this manner, there will be a very small number of taxpayers, namely, only the refiners, and there will be very little work to be done at the port of entry since almost all of the sugar entering is to be further refined and does not go into consumptive channels in its then state. The only exception of any importance is the sugar imported for use in the manufacture of chewing tobacco and this represents no more than one half of one percent.

Section 10(c)

Strike out in lines two and three the words "with the approval of the President" and the commas preceding and following such words.

Insert at end of Section 10 (c) the following:

"any determination which the Secretary of Agriculture, pursuant to the provisions of this Act, is required or authorized to make, shall be final if in accordance with law."

The purpose of the first suggested amendment to this Section is to eliminate the burden upon the Chief Executive of signing the many regulations which are necessary to the efficient administration of the Act especially in tax matters, and to save the delays incident to the additional signature required by the present Section. The present provisions add nothing to the legal efficacy of the regulations.

The purpose of the suggested additional provision is to make clear the fact that the Secretary's determination in all matters, particularly tax matters, is final, if in accordance with law.

Section 10(h)

Insert after first sentence of Section 10(h), which ends on line 7:

"Specifically, and without limitation of the foregoing, the Secretary shall have power to require any person or corporation, at all reasonable times, to permit the Secretary of Agriculture and his duly authorized agents, to have access to, to examine and to copy any books, records, accounts, contracts, documents, memoranda, papers, correspondence, and other written data belonging to or kept on behalf of such person or corporation, or any subsidiary, affiliate, agent, or broker of such person or corporation, relating to any basic agricultural commodity or product thereof, or any competing commodity or product thereof with respect to which a hearing is being held, or an investigation is being made, relative to the imposition, reduction, or increase of any tax, pursuant to sections 9 and 15 of this Act; and the Secretary shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all such books, records, contracts, documents, memoranda, papers, correspondence, and other written data at such hearing or investigation. All information furnished to or obtained by the Secretary of Agriculture pursuant to this section shall, if so specifically designated in writing by such person or corporation, remain the confidential information of the Secretary of Agriculture and such of his agents and employees as may be entitled to the same in the regular course of their official duties, and shall not be divulged, disclosed or made public except that such information (a) may be combined and published in the form of general statistical studies or data in which the identity of the persons furnishing such information shall not be disclosed, (b) may be divulged or disclosed upon lawful demand made by the President or by either House of Congress or any committee thereof, or in response to a subpoena issued by any court of competent jurisdiction, and (c) may be offered in evidence by or on behalf of the Secretary of Agriculture or the United States, or both, in any action, suit or proceeding brought pursuant to this Act, or in any hearing held pursuant to this Act, or in any other action, suit or proceeding in which the amount, validity, propriety or applicability of any tax imposed under this Act is challenged or involved, whether or not such information was obtained from or furnished by the person or corporation by or against whom such action, suit, proceeding or hearing was instituted."

The Secretary is required to carry on investigations, to make findings based thereon, and to fix rates of taxes on the processing of basic agricultural and competing commodities. His power to subpoena witnesses and examine books in connection therewith is not too clear, and the fore-

going is suggested as a clarifying amendment. The effect will be to make it certain that the Secretary can get the best available evidence and check all statements made at hearings, in connection with the duties he has to perform, his powers to investigate being limited only by the Constitution, not by uncertainty in statutory language.

Section 13

Line 7, after the first word "commodity", strike out the period, insert in lieu thereof a colon and the words:

"provided, however, that any proclamation which shall terminate any tax or taxes under this title shall not affect any claim for refund filed prior to the proclamation or during a period of six (6) months after the date of said proclamation."

Attention is invited to the fact that when the President proclaims that the national economic emergency in relation to agriculture has been ended Title I of the Act immediately ceases to be in effect. There results the automatic repeal of Part 2 of Title I of the Act in its entirety, including the repeal of the provisions of Section 16(a)(2). The effect of the amendment is to keep alive the right to refund under Section 16(a)(2) and the right to other refunds for a period of six (6) months thereafter.

It may be that the result desired is to limit refunds of floor stocks taxes. If this is so, then Section 16(a)(2) is meaningless, if the Act is terminated by proclamation of the President. Export and charitable refunds pending would also be affected.

Section 15(a)

In line 4, after the word "value", strike out the words "compared with" and insert in lieu thereof a comma and the word "considering"; in line 5 after the word "manufacture" insert a comma.

After the word "tax", line 6, first word, insert a comma and the words "at the full existing rate, or in any amount" followed by a comma.

Line 10, following the word "Treasury", strike out the remainder of the paragraph and insert in lieu thereof:

"and thereafter the processing tax with respect to such amount of the commodity as is used in the manufacture of such products shall be imposed at such rate, if any, as the Secretary of Agriculture determines and proclaims will effectuate the declared policy of the Act."

The amendment in lines 4 and 5 is for clarity and eliminates the comparison of price and quantity.

While we believe that it is not required that we now impose the tax at the full rate, or not at all, and that a tax at a lesser rate can be imposed, the suggested amendment clarifies the language, so as to make certain that a finding by the Secretary of Agriculture does not require the abatement of all the tax.

In addition, the words in line 11, "assessed or paid," are quite confusing. The tax is payable without assessment. In addition, if the taxpayer became liable for the tax before the certification by the Secretary of Agriculture, but paid the tax after that date, then he is entitled to a refund, but if he paid the tax when due, he is not entitled to a refund. This unquestionably is not the result intended, and the proposed amendment cures the present defect.

Section 15(b)

In lieu of the present paragraph, insert the following:

"The Secretary of Agriculture is authorized, by regulations, to exempt, in whole or in part, from the payment of the processing tax, the processing of commodities by or for the producer thereof, where in the judgment of the Secretary the imposition of the processing tax with respect thereto is unnecessary to effectuate the declared policy of the Act, and to make such further regulations as are necessary to give effect to the exemptions and to control exemptions within the limits granted, including regulations specifying, for all purposes, the proof of the right to any such exemption which shall be required from any producer."

In discussing amending Section 15(b), some of the conferees thought that it would be easier to give the Secretary of Agriculture general power to exempt, rather than to specify limits of the exemption, believing that specified limits would result in considerable difficulty in getting the amendment adopted. I am of the opinion that it is desirable to leave the matter of all exemptions to the discretion of the Secretary on whose shoulders rests the success or failure of the various programs. Alternative B follows more the amendment suggested by Dr. Ezekiel.

Section 15 (c).

Strike out Section 15(c) and insert in lieu thereof, the following section:

"Any person, including any State or Federal organization or institution, delivering any product to any organization for charitable distribution, or use, including any State welfare organization, for its own use, or to any person receiving the product as the object of charity of the State or Federal charitable organization or institution, whether the product is delivered as merchandise, or as a container for merchandise, or otherwise, shall, if such product or the commodity from which processed is under this title subject to tax, be entitled to a refund of the amount of any tax paid under this title with respect to such product so delivered, or to a credit against any tax due and payable under this title of the amount of tax which would be refundable under this section with respect to such product so delivered; provided, however, that no tax shall be refunded or credited under this section, unless the person claiming the refund or credit establishes, in accordance with regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, (1) that he has not included the tax in the price of the product so delivered or collected the amount of the tax from the said organization, or (2) that he has repaid, or has agreed in writing to repay, the amount of the tax to the said organization. No refund shall be allowed under this section unless claim therefor is filed within six (6) months after delivery of the products to the organization for charitable distribution, or use."

In the case of State and Federal purchases for charitable distribution or use, it appears highly desirable that the processor should be permitted to credit, against taxes due and payable, the tax which would be refundable. In this manner, the tax would not be added to the price and the State and Federal organizations would be in a position to see to it that they get the benefit of the refund or credit of the tax. It would simplify very greatly the problems of the FSRC.

The proviso in the proposed amendment is, in substance, similar to Section 621(d) relating to overpayment of taxes. (It is proposed that Section 19 be amended to make applicable the provisions of Section 621.)

As subsection (c) of Section 15 now reads, it authorizes the refunding of taxes to the person who delivers to the State or Federal organizations, even though no allowance therefor has been made by that person in the selling price of

the particular product to said organizations. Such a result appears not to be the one anticipated or desired.

Governor Horner of Illinois has asked that we consider allowing the refund or credit on all sales to State Welfare organizations.

Where a State organization or institution buys a processed article in respect to which a processing tax has been paid, further processes this article, and delivers it to an organization for charitable distribution or use exclusively, then it would seem that although the first processor is not entitled to an exemption on account of the delivery to the State institution, that institution should be entitled to the refund upon delivery to the charitable organization just as though the first processor had delivered it direct. Furthermore, there is always some question as to whether an organization making charitable distributions alone or required purely for charitable purposes should be required to deduct the amount of the processed products consumed by the employees. The Bureau of Internal Revenue has taken the position that this must be deducted as the statute now reads. This ruling requires much additional bookkeeping and is probably not the result which Congress intended to reach. It would seem to be desirable to clarify the statute so that a State welfare organization, or an organized charity would be entitled to claim the refund on all of the products delivered without the necessity of a complicated method of keeping books.

The States have been sending briefs to the Bureau of Internal Revenue and to the A.A.A. and I understand to members of Congress also, requesting that taxes in connection with the processing of all products delivered to States should be refunded and that it is illegal not to do so when the products are for purely governmental functions as distinguished from proprietary functions. The legal argument can be dismissed without much comment. There is nothing to the argument whatsoever. The problem might have arisen in connection with Section 18

dealing with deliveries under existing contracts but the Bureau of Internal Revenue has taken the position that in such cases the taxes are not to be required of a vendee State. With respect to permitting refunds on account of the delivery of all products to the States, the debates in Congress are enlightening. It is evident therefrom that it was the intent of Congress, since the purpose of the processing tax was to increase farm prices, to grant as few exemptions as possible in the Act, the more effectively to accomplish the purpose of the Act. In the course of the debate in the House on H.R. 13991 (a bill preceding the bill which became the Agricultural Adjustment Act) an attempt was made by Representative McCormick to add a provision providing for the refund of the processing tax to States on products purchased for use by States in the exercise of an essentially governmental function. This attempt was unsuccessful. (Cong. Reg. Volume 75, 72nd Congress, Second Session, Pages 1751 to 1752.) In fact, Section 14 of H.R. 13991 specifically denied any exemption to a processor who sold to a State or subdivision thereof. During the debate on the Agricultural Adjustment Act in the Senate, Senator Smith proposed an amendment to exempt articles purchased by a State or a political subdivision thereof, for use solely in the exercise of an essentially governmental function. This attempt was also unsuccessful, and the argument against it was that above given, that is, that since the purpose of the processing tax was to increase farm prices, the fewer exemptions there were in the Act, the more effectively would this purpose be accomplished. (Cong. Record, Volume 77, 73rd Congress, 1st Session, Pages 1784 to 1786.)

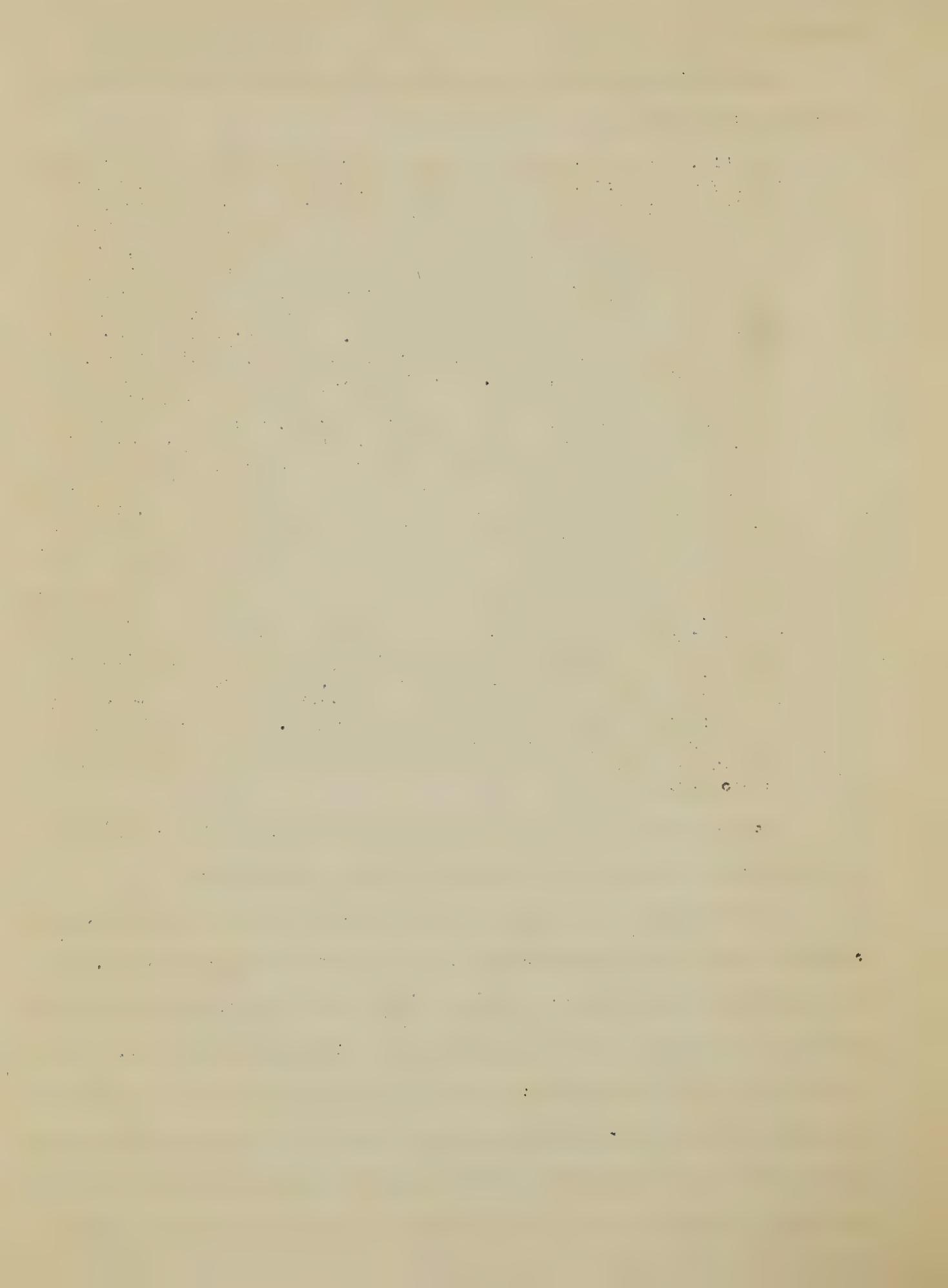
Section 15 (d)

Strike out Subsection (d) of Section 15 and insert in lieu thereof the following subsection:

"(d) (1). If the Secretary of Agriculture has reason to believe that the payment of the processing tax on any agricultural commodity, hereinafter referred to as the 'primary commodity', is causing or will cause to the processors or producers thereof disadvantages in competition from any competing commodity or competing commodities, including a primary commodity, by reason of excessive shifts in consumption between such commodities or products thereof, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties. If thereupon the Secretary find that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the commodity or the products thereof in competition with the primary commodity, or the products thereof, and the compensating rate, or rates, of tax on the processing of the competing commodity, or on the processing thereof into competing products, necessary to prevent such disadvantages in competition. On and after the twentieth day succeeding the date of the signing of such proclamation, there shall be levied, assessed and collected, upon the first domestic processing of such commodity, or on the first domestic processing of such commodity into the competing products, a tax to be paid by the processor at the rate or rates specified, until such rate or rates are altered, pursuant to a further finding under this section, or the tax or rate thereof on the primary commodity is altered or terminated, in which event the rate or rates of tax on the competing commodity or commodities shall be altered or terminated, as the case may be, the alteration to be to such extent as the Secretary shall determine will best effectuate the declared policy of the Act. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the primary commodity."

I believe that some of the language in Section 9 (b) is preferable to the language in Section 15 (d) and that the two should conform.

It seems highly desirable that there should be a period of time elapse between the date of the proclamation and the effective date of the tax. In the first place, the Bureau of Internal Revenue will thus have an opportunity to give notice to the collectors, particularly at the ports of entry. In the second place, the industry affected will be given an opportunity to make an inventory for floor stocks tax purposes and will be in a position to readjust prices. This was not possible in the case of the compensating taxes on paper and jute and the result was that various industries found it difficult



to do business for several days following December 1.

It is believed that the change in language suggested would leave no doubt as to the power to apply the compensating tax provided by Congress at a varying rate according to the competing product produced, which result is the only way of effectuating the purpose of these provisions. While it is believed that the present language permits our doing this, there is room for argument, and the new language is for the purpose of clarifying the present language and removing any doubt.

It is believed advisable to add "or producers." In the case of commodities in competition with hogs, for example, the processors of hogs are also the processors of cattle and sheep. Regardless of the competitive situation, they are not particularly anxious to pay taxes on cattle and sheep, in addition to the tax on hogs. Consequently we were unable to get any frank statement of the facts from the packers or the Institute of Meat Packers, when we held our hearing on commodities in competition with hogs. The same situation may well arise, for example, in the case of rayon in competition with cotton, since many of the processors of cotton have a substantial interest in rayon mills. I understand that pressure has been brought on cotton processors who testified in respect of competition from paper articles at prior hearings, so that they will not testify at the hearing of January 25, 1934. The term "or producers" will give considerably more latitude.

Section 15(d)(2)

At the end of Section 15(d)(1), insert the following new paragraph:

"(2) If the Secretary of Agriculture has reason to believe that the payment of the processing tax on any commodity with respect to which a compensating tax is in effect under Section 15(d)(1) is causing or will cause to the processors or producers thereof disadvantages in competition from any competing commodity, or competing commodities, by reason of excessive shifts in consumption between such commodities or products thereof, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties. If thereupon, the Secretary finds that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the commodity or the products thereof in competition with the taxed commodity, or the products thereof, and the compensating rate, or rates, of tax on the processing of the commodity, or on the processing thereof into the competing products, necessary to prevent such disadvantages in competition. On and after the 20th day succeeding the date of the signing of such proclamation, there shall be levied, assessed and collected, upon the first domestic processing of such commodity, or on the first domestic processing of such commodity into the competing products, a tax to be paid by the processor at the rate or rates specified, until such rate or rates are altered, pursuant to a further finding under this section, or the tax or rate thereof on the taxed commodity is altered or terminated, in which event the rate or rates of tax on the competing commodity or commodities shall be altered or terminated, as the case may be, the alteration to be to such extent as the Secretary shall determine will best effectuate the declared policy of the Act. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary, upon the taxed commodity."

It is desirable to have Section 15(d) so phrased that, whenever a compensating tax is in effect with respect to a commodity competing with an agricultural commodity, disadvantages in competition suffered by processors of the competing commodity with respect to another competing commodity, resulting from the payment of the processing tax, can be overcome by a compensating tax on such other competing commodity. For instance, processors of jute complain that the payment of the compensating tax on jute yarn is causing them disadvantages in competition with fibers such as sisal, with respect to which no finding under Section 15(d) has been made as a commodity competing with cotton.

Similarly, rayon processors take the position that a compensating tax on rayon because of competition with cotton, will cause shifts in consumption

from rayon to silk. It is conceivable that no competition will be found, within the terms of Section 15(d), with respect to cotton and silk, and also conceivable that a compensating tax will be imposed on rayon in competition with cotton. Rayon interests insist that a compensating tax on rayon, as a benefit to cotton farmers, would be a greater benefit to the Japanese silk farmer.

While it is apparent that argument will be made that broadening Section 15(d) to contemplate competition between non-agricultural commodities, will create an endless cycle of compensating taxes, nevertheless it is equally apparent that any action taken by the Secretary under this Section 15(d)(2) would be based on substantial reason, and not on caprice. The same reasons warranting the inclusion of Section 15(d) in the Act originally would, for the most part, warrant the inclusion of Section 15(d) (2).

Section 15 (c)

Lines 3 and 4, strike out the words "in chief value", and insert in lieu thereof the word "partly."

Line 7, after the comma following the word "apply", insert the words "whether imported as merchandise, or as a container of merchandise, or otherwise" followed by a comma.

This is the converse of the situation under Section 17 (a). See explanation under the suggested amendments to that section. In addition thereto, it is to be noted that, whereas Hawaiian and Porto Rican sugar bags will bear a tax of 44 to 48 cents per ton of sugar, Cuban and Phillipine bags will not, unless the latter amendment is adopted.

Line 9, after the word "processing", insert the words "of such commodity."

The words "of such commodity" seem to be desirable in order to clarify this section.

Section 16 (a)(2)

Strike out in lines 2 and 3 the parenthetical expression "or if it has not been paid, the tax shall be abated".

Insert, after the last word of the subdivision, a comma and the words:

"which would have been paid if the processing had occurred on that date. No refund shall be allowed under this section unless claim therefor is presented within six (6) months after the date of the termination of the processing tax. No refund shall be made under this section to any person if the claim is for an amount less than ten dollars."

If a butcher has on hand at the date of the termination of the tax a large amount of products of a commodity subject to the processing tax for which he paid a price, including tax, he should be entitled to the refund. However, with this parenthetical expression in the Statute, the packer who has not yet paid the tax will file claim for abatement of the tax even though he has included it in his price to the butcher.

This suggested change limits the refund to the rate of the tax on the date of termination of the processing tax.

The suggested limitation of the time within which to file the claim for refund follows in substance the provisions of Section 1205(b) of the Revenue Act of 1926.

The suggested limitation of the time within which to file the claim for refund follows in substance the provisions of Section 1205(b) of the Revenue Act of 1926.

Section 16 (b), at the beginning of line 7, strike out the words "or abatement".

Section 17 (a)

Insert in line 3, after the word "product", the following words in parenthesis: "(whether exported as merchandise or as a container of merchandise, or otherwise)".

Insert in line 4, after the word "product", the following words in parenthesis: "(whether exported as merchandise, or as a container of merchandise, or otherwise)".

Line 5, strike out the words "in chief value", and insert in lieu thereof the word "partly".

The expression "wholly or in chief value" limits the refunds and does not permit the refund of all of the taxes paid. For example, the cheaper grades of tires are in chief value of rubber, while the higher grades of tires, 10 ply or more, are in chief value of cotton. The processing tax has been paid on the cotton going into the cheaper grades of tires, as well as on the cotton going into the more expensive grades of tires. The processing tax is refundable under the statute as it now reads only on the more expensive grades of tires. As this provision is to encourage exportations as a means of removing surpluses, the amendment would seem to be desirable. The same comment may be made with respect to adding the phrase ("whether exported as merchandise or as a container of merchandise, or otherwise"). For instance, there is a tax on cotton going into cotton bags. When wheat or any other commodity is exported, no refund is allowable on account of the cotton bag containing the wheat, and the exporter is accordingly at a disadvantage in competition abroad, because of the tax on the cotton going into the bag.

The Cotton Section is in favor of such an amendment, for the foregoing reasons.

The Bureau of Internal Revenue believes that such an amendment might

result is substantially larger refunds than heretofore estimated, but has no objection thereto.

Insert after Section 17 (a) the words "No refund shall be allowed under this section unless claim therefor is presented within six (6) months after the date of exportation."

There is no statute of limitation provided for the filing of claims for refund and the Bureau suggests that six (6) months is ample for exporters to file their claim for refund.

Section 17(b)

Line 6, strike out the words "in chief value" and insert in lieu thereof the word "partly".

See comments under Section 17(a).

Section 19(b)

Insert after the figures "1932" in line 3, the words "and the provisions of Section 621(d) of the Revenue Act of 1932 relating to overpayments".

Insert at the end of subsection (b) of Section 19 the words:

"If the payment of any tax covered by any return under this title is hereafter postponed, interest shall be paid upon the amount of tax with respect to which payment has been so postponed, and shall be collected as a part of the tax, at the rate of six per cent per annum from the date when such tax would, but for such postponement, have been payable."

The Bureau of Internal Revenue has ruled that interest does not run on the postponed payments of processing and floor stocks taxes. Postponements of 30, 60 and 90 days are being allowed and unquestionably taxpayers are taking some advantage of the postponement unnecessarily, since interest does not run. It is believed that in many cases payments would be made more promptly if interest ran on the postponed payments.

The provisions of Section 621(d) of the Revenue Act of 1932, reads as follows:

"No overpayment of tax under this title shall be credited or refunded otherwise than under subsection (a), in pursuance of a court decision or otherwise, unless the person who paid the tax establishes, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, (1) that he has not included the tax in the price of the article with respect to which it was imposed, or collected the amount of tax from the vendor, or (2) that he has repaid the amount of the tax to the ultimate purchaser of the article, or unless he files with the Commissioner written consent of such ultimate purchaser to the allowance of the credit or refund."

Section 19(c)

Immediately following Section 19(c), insert the following subsection:

"(d) No suit or proceeding shall be maintained in any court for the recovery of any tax under this title alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury, established in pursuance thereof; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. No such suit or proceeding shall be begun before the expiration of six months from the date of filing such claim, unless the Commissioner renders a decision thereon within that time, nor after the expiration of two years from the date of the payment of such tax, penalty, or sum, unless such suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after any such disallowance notify the taxpayer thereof by mail."

The Agricultural Adjustment Act contains no period of limitation with respect to suits and proceedings by the taxpayer. The foregoing provisions follow substantially the provisions of Section 3226 of the Revised Statutes, as amended.

PENALTIES FOR FRAUDS BY PURCHASERS AND PROCESSORS

Section 20:

"Whoever in connection with the purchase of, or offer to purchase, any commodity subject to any tax under this title, or which is to be subjected to any tax under this title, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any amount deducted from the market price or the agreed price, of the commodity consists of a tax imposed under this title, or (2) ascribing a particular part of the deduction from the market price or the agreed price, of the commodity, to a tax imposed under this title, knowing that such statement is false or that the tax is not so great as the amount deducted from the market price or the agreed price, of the commodity, ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not exceeding one year, or both."

"Whoever in connection with the processing of any commodity subject to any tax under this title, whether commercially, for toll, upon an exchange, or otherwise, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the charge for said processing, whether commercially, for toll, upon an exchange, or otherwise, consists of a tax imposed under this title, or (2) ascribing a particular part of the charge for processing, whether commercially, for toll, upon an exchange, or otherwise, to a tax imposed under this title, knowing that such statement is false, or that the tax is not so great as the amount charged for said processing ascribed to such tax, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than \$1,000.00 or by imprisonment for not exceeding one year, or both."

I have been advised that country purchasers are taking advantage of producers in the purchase of hogs. Let us say that the Chicago price for hogs is \$4.00 a hundred weight. Let us assume that the country buyer would ordinarily deduct \$1.00 therefrom. I am told that the buyer agrees on \$3.00 a hundred and then tells him he must deduct \$1.00 for the processing tax, although the buyer does not have to pay such tax and does not have it deducted from the price he gets when he sells at Chicago. It is obvious that he knows that his statement to the farmer is false and that he is taking advantage of him.

I have, therefore, recommended in paragraph 1 of the above proposed amendment a penalty which conforms to a certain extent to the penalties for

frauds by purchasers, under Section 1123 of the Revenue Act of 1926, which Section is applicable under Section 19 of the Act. This Section reads as follows:

"Section 1123: Whoever in connection with the sale or lease, or offer for sale or lease, of any article, or for the purpose of making such sale or lease, makes any statement, written or oral, (1) intended or calculated to lead any person to believe that any part of the price at which such article is sold or leased, or offered for sale or lease, consists of a tax imposed under the authority of the United States, or (2) ascribing a particular part of such price to a tax imposed under the authority of the United States, knowing that such statement is false or that the tax is not so great as the portion of such price ascribed to such tax, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$1,000.00 or by imprisonment not exceeding one year, or both."

I have been advised that producers of wheat take their wheat to a toll mill to have it ground for their own consumption, make out the necessary affidavit or witnessed statement, to support an exemption which the processor will claim and who, therefore, must know that there will be no taxon account of the processing for this producer. Notwithstanding, the processor, as part of the processing tax, makes the producer pay a higher rate of toll than he otherwise would make him pay. The same situation might well result in the case of hogs slaughtered for a producer. The second paragraph of the above proposed amendment is for the purpose of meeting this situation, if we can.

ng SUG
SUGGESTED AMENDMENTS TO THE AGRICULTURAL ADJUSTMENT ACT
AS TO SUBSTANTIVE MATTERS

The following suggested amendments all represent changes in the present powers of the Secretary:

I. Extend Licensing Section to Cover Production by Producers:--

Amend Section 8 (3) by adding to the proposed new subparagraph (a) a semi-colon and the following:

"whenever the Secretary of Agriculture determines that producers controlling more than two-thirds of the average acreage planted to any agricultural commodity have requested the same, to prohibit producers and others from engaging in the production and/or sale of such commodity or the products thereof so as to burden, obstruct, or in any way affect interstate or foreign commerce, without a license, and to issue licenses to permit producers and others to engage in such production and/or sale upon such terms and conditions as the Secretary of Agriculture may deem necessary to effectuate the declared policy of this Act and the restoration of normal economic conditions in the production or marketing of such commodity. The 'average acreage' planted to any commodity shall be determined by the Secretary upon the basis of the annual average acreage planted during such preceding period as the Secretary may determine."

II. Make Benefit Payments and Processing Taxes Available for all Commodities.

Amend Section 8 (1) by striking out in lines 2 and 5, respectively, the word "basic."

Amend Section 9 (a) by striking out in line 5 the word "basic."

Strike out in lines 1 and 2 of Section 11 the words "'basic agricultural commodity' means wheat, cotton, field corn, hogs, rice, tobacco, and milk and its products" and substitute in lieu thereof the words "any agricultural commodity."

Amend Section 13 by striking out in line 4 the word "basic."

Amend Section 13 (d) by striking out in line 2 the word "basic" and in lines 16 and 19, respectively, the words "basic agricultural;" by inserting in

LIBRARY
RECEIVED
★ FEB 2 - 1934
D. L. D. in Agric

line 3 after the word "commodity" the words "hereinafter referred to as 'primary commodity'"; and by inserting in lines 16 and 19, respectively, in lieu of the words "basic agricultural" the word "primary". (Clarifying changes in this Section are separately proposed for tax reasons.)

III. Prohibition against Employees Taking an Executive Position with an Industry Whose Marketing Agreement, License, or Code the Employee has Worked On:--
Amend Section 10(g) by inserting at the end of the first sentence the following:

"No person who while an officer or employee of the Department of Agriculture has participated in or been consulted in connection with the drafting, administration, or enforcement of any marketing agreement or license authorized by this Act or any code of fair competition authorized by the National Industrial Recovery Act, shall accept any executive position with the industry or business covered by such marketing agreement, license, or code, including any position with any authority or other agency within such industry provided for by said marketing agreement, license, or code."

The above suggestion might be considered as no addition to the fundamental policies of the Act, but merely a logical extension of the present prohibition against personal profit by speculation in agricultural commodities by an employee of the Administration.

IV. Agricultural Labor Provisions in Benefit Contracts:-- Amend Section 8 (1) by inserting after the first sentence the following:

"All agreements authorized by this section shall contain provisions which will eliminate child labor among and will fix minimum wages for agricultural workers employed by the producers who are parties to such agreements."

The purpose of this suggested amendment is to extend the principles of the Administration's policy to agricultural laborers whom the National Recovery Administration has ruled are not within its jurisdiction and whose interests have not heretofore been specifically considered by any Department of the Government.

